



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 16, 1998

Mr. David A. Anderson
Chief Legal Counsel
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701-1494

OR98-0159

Dear Mr. Anderson:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 111737.

The Texas Education Agency (the "agency") received a request for copies of the ten proposals for 1997-98 SENSR funding that had the highest total points awarded by reviewers. You explain that the requested proposals may contain information that is proprietary in nature and is protected from disclosure by sections 552.101 and 552.110 of the Government Code. You raise no exception to disclosure on behalf of the agency, and make no arguments regarding the proprietary nature of the requested information. You have submitted for our review copies of the requested proposals.

Since the property and privacy rights of third parties may be implicated by the release of the requested information, this office notified the Texas Engineering Foundation, Texas A&M University, and LULAC National Educational Service Center about the request. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Open Records Act in certain circumstances).

The three entities did not respond to our notice by raising any exception to disclosure. Further, we do not believe that you have established that these entities' information is protected under section 552.110. *See* Open Records Decision Nos. 639 (1996) at 4 (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from

disclosure), 552 (1990) at 5 (party must establish prima facie case that information is trade secret), 542 (1990) at 3. Therefore, the proposals may not be withheld under section 552.110.

You also raise section 552.101 for some of the information in the requested proposals. Section 552.101 excepts from required public disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. We note that federal law may prohibit disclosure of the social security number included in this request for records. A social security number is excepted from required public disclosure under section 552.101 of the act in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), *if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. See Open Records Decision No. 622 (1994).* Based on the information you have provided, we are unable to determine whether the social security number at issue is confidential under this federal statute. We note, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Therefore, prior to releasing any social security number information, the agency should ensure that the information is not confidential under this federal statute. We have marked the social security number for your convenience.

As for the remaining information for which you have raised section 552.101, you have not cited a statute or other provision, nor are we aware of one, that makes this information confidential by law. Therefore, except for the marked social security number, you must release the requested proposals.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/ glg

Ref: ID# 111737

Enclosures: Submitted documents

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